

subscriber.”¹⁴ The 2,223 subscribers at Eagle Mountain reside in the highest cost area of Utah, and they face another substantial rate increase if the sale to DCCV is delayed. The UPSC has found the sale to DCCV to be in the public interest.¹⁵

V. Conclusion

DCCV submits that good cause exists for granting the requests set forth herein. DCCV is not a “competitive local exchange carrier.”¹⁶ It will be a facilities-based carrier, and it will operate in every respect as do the other Utah rural ILECs, all of which receive federal USF support. Denial of the request for waiver of section 69.2(hh) would be contrary to the basic principles which are at the core of the USF program, and waiver of the section will better serve the public interest. In the circumstances at Eagle Mountain, denial of the waiver requested will frustrate, rather than further, the USF objectives by denying cost support to a new company which will be providing needed service to an area where, prior to 1996 and EMC’s subsequent creation of the municipal system in 1997, no existing carrier ever had facilities.

Approval of immediate USF support, based on average schedule treatment, will allow the sale to DCCV to proceed without delay. Without such immediate USF support, neither DCCV, nor any other carrier – nor EMC – can economically sustain what is already the highest-cost basic service in the State.

¹⁴ *In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board*, Recommended Decision and Order, CC Docket No. 78-72, 80-286, released November 23, 1984, at ¶ 58.

¹⁵ Exhibit 2, Page 17, ¶ 1, 2.

¹⁶ Exhibit 2, Page 18, ¶ 7; Page 29, ¶ 8(l)(viii).

DATED this 27th day of October, 2004.

A handwritten signature in black ink, appearing to read "David R. Irvine", written over a horizontal line.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Direct Communications Cedar Valley, LLC)
)
and)
)
Qwest Corporation)
)
Joint Petition for Waiver of the definition of)
"Study Area" of the Appendix-Glossary of)
Part 36 of the Commission's Rules)
_____)

CC Docket No. 96-45

To: Chief, Wireline Competition Bureau

JOINT PETITION FOR EXPEDITED WAIVER

Pursuant to Section 1.3 of the Federal Communication Commission's ("FCC" or "Commission") Rules,¹ Direct Communications Cedar Valley, LLC ("DCCV") and Qwest Corporation ("Qwest") (together, "Petitioners"), by and through their counsel, request a waiver of the definition of "study area" contained in the Appendix—Glossary of Part 36 of the Commission's Rules.

Petitioners request these waivers to enable DCCV to complete its proposed purchase of the municipal telephone system owned and operated by Eagle Mountain City ("EMC") within the State of Utah. The area served by EMC's municipal telephone system is currently within Qwest's Utah study area,

¹ 47 C.F.R. § 1.3.

and Petitioners request that the territory included within EMC's municipal telephone system be removed from Qwest's study area in Utah and recognized as a separate study area for DCCV. Exhibit 1, attached hereto, identifies the area to be served by DCCV.

Petitioners request that this Petition be reviewed and approved expeditiously. The facts and circumstances supporting approval are similar in material respects to those involved in waiver requests that have been approved recently.² Prompt approval will enable DCCV to focus time and resources on the system it will purchase immediately following the transaction closing, which it seeks to accomplish before the end of calendar year 2004. Approval is also necessary in order for DCCV to receive federal Universal Service Fund ("USF") support at the time it begins to operate the system.

INTRODUCTION

Qwest is the largest incumbent local exchange carrier in Utah ("ILEC"). It is a price cap carrier, and, as of June 30, 2004, it owns and operates 1,026,961 access lines in 54 exchanges throughout Utah, including internal and official lines. Although Qwest has never had telephone facilities in the area served by the EMC municipal system, the area has been within Qwest's Utah study area.

² See, e.g., *Dickey Rural Telephone Cooperative, et al. And Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 61.41(c) and (d), 69.3(e)(11) and 69.605(c), Order, 17 FCC Rcd 16881 (Wir. Comp. Bur. 2002) ("Dickey Rural Order"); Petition for Waivers Filed by Baltic Telecom Cooperative, Inc., et al., Concerning Sections 69.3(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd 2433 (Acc. Aud. Div. 1997) ("Baltic Order").*

That study area is referred to by the Universal Service Administrative Company ("USAC") as study area code 505107. After the purchase transaction is completed by DCCV, Qwest will continue to provide local telephone service within the other Utah areas it serves and will retain its study area for those exchanges.

DCCV is a newly-formed Utah company whose corporate parent, Direct Communications Rockland, Inc. ("DCRI") is a certificated incumbent ILEC in the State of Idaho. DCCV was formed solely to operate the system to be purchased from EMC and that system's 2,223 subscribers; it serves no customers at the present time. DCRI, the parent corporation, serves approximately 1,500 rural subscribers in Rockland, Arbon, and the southern half of Bear Lake County in Idaho. DCRI is an eligible telecommunications carrier under the federal Act, and it receives federal USF support as a "cost company" carrier in Idaho, not a "price cap company." DCRI is not a competitive local exchange carrier ("CLEC"), nor does it control any companies operating as CLECs.

As will be discussed below in more detail, the factors that the Commission requires for a study area waiver are, or will be, all present in this case: (1) the public interest will be served by approving the waiver; (2) the Utah Public Service Commission ("UPSC") supports and recommends this proposal; and (3) the purchase of the EMC municipal system by DCCV will not adversely impact the USF.

Related to this Petition, on this day, Petitioner DCCV is also filing an application requesting a waiver of Sections 36.611, 36.612, 69.2(hh), and waiver of the filing deadlines set forth in Sections 54.314(d) and 54.307(c) in order to permit immediate access to USF support. In that application, DCCV has also requested average schedule treatment under Section 69.605(c).

WAIVER OF THE FROZEN STUDY AREA DEFINITION IS WARRANTED

Petitioners seek a waiver of the frozen study area definition. Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. Although the rule was adopted to prevent a carrier from segregating territories artificially to maximize high-cost support,³ the Commission has recognized that changes "that result from the purchase or sale of exchanges in arms-length transactions" do not necessarily raise the concerns which prompted the freeze.⁴

The Commission has recognized that failure to waive the rule in the case of the sale of exchanges would produce an absurd result, forcing the seller to continue to include exchanges in its study area for which it has no costs, and preventing the buyer from including in its study area exchanges it actually serves.⁵ Such a result would not serve the Commission's policy objective of

³ See *MTS and WATS Market Structure, Amendment of Part 67 of the Rules and Establishment of a Joint Board*, Recommended Decision & Order, 57 RR 2d 267, ¶ 65 (1984).

⁴ See, e.g., *Alltel Corporation Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 5 FCC Rcd 7505, ¶ 7 (Com. Car. Bur. 1990).

ensuring that carriers' actual costs are reflected in their accounting so that they can accurately set just, reasonable, and non-discriminatory rates. Moreover, with respect to the purchase transaction which is the subject of this Petition, Qwest has never had facilities in the area served by the EMC municipal system, nor does Qwest draw USF support for that area or the remaining Qwest exchanges in its study area. Qwest is not the seller of the system which DCCV will purchase, or a party to the transaction, and the waiver sought herein will conform the Commission's policy objectives to the operational facts on the ground.

A. Granting the Waiver Is in the Public Interest.

The EMC municipal telephone system was created in 1997 to serve an area in which no other carrier had facilities. From its inception, it has been problematic for EMC, its subscribers, and Utah regulators.⁶ As a municipal utility, Utah law barred it from receiving state USF support, and all of the expenses of constructing and operating the system have been borne by the subscribers. They pay the highest basic local rates in Utah, at \$27.00 per month, which is \$4.05 higher than the State's USF ceiling rate of \$13.50 per residential access line (when the extended area service [EAS] and carrier access line charge [CALC] are added to the "affordable rate" target used by the UPSC).⁷

⁵ *Amendment to Part 36 to the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974, 5975-76 (1990) ("*Part 36 NPRM*").

⁶ *Id.* at Page 5.

⁷ *Id.* at Page 6, 7.

The purchase contract between EMC and DCCV is conditioned on DCCV receiving state and federal USF support.⁸ If DCCV cannot qualify for USF support, the current subscribers will have to bear the full costs of the growth, maintenance, and operation of the EMC system. A switch replacement three years ago allowed subscribers access to many, but not all, features and services considered standard options by other Utah ILECs. The sale of the system to DCCV will expand the state-of-the-art service options available to subscribers, and will put the system under the management and operation of a technologically experienced and financially stable private carrier. DCCV can obtain capital financing on more reasonable terms than can EMC in order to finance growth and improvements.⁹

The UPSC has found the transaction and DCCV's operation of the EMC system to be in the public interest.¹⁰ Regardless of who operates the system, it cannot economically be sustained, absent USF support, without raising rates for the subscribers. EMC has advised state regulators that if the sale transaction cannot be closed by December 31, 2004, the City will have to raise subscriber rates by approximately \$11.00 per month in order to meet current operating expenses.¹¹ As rates increase so dramatically, it is likely that some number of

⁸ *Id.* at ¶ 6, Page 22.

⁹ *Id.* at Page 7.

¹⁰ *Id.* at ¶¶ 1, 2, Page 15.

subscribers will find telephone service unaffordable and will discontinue service. Not only will such a result make DCCV's purchase more economically questionable, it will put the community at risk.

The area served by the EMC system is approximately 5 miles south of the nearest state highway. There are no services of any nature within the City, other than municipal services, and there is very little commercial activity. This isolated community of 6,093 persons is 8 miles from the nearest life supporting facilities. It is 30 miles from the nearest fully-equipped hospital, and life-threatening emergencies require evacuation by air ambulance. It is one of the few areas along Utah's Wasatch Front where young families can find affordable, entry-level homes. Approximately 40% of the population is under age 12; the average age of the population is 21 years. The area does not have reliable wireless telephone service, and reliable, available landline telephone service is critical to public health and safety. The sale to DCCV, therefore, is a matter of significant urgency to the City.

B. State Commission Approval of a Study Area Waiver.

On August 9, 2004, the Utah Public Service Commission issued its Order granting DCCV a certificate of public convenience and necessity, thereby certifying DCCV to provide telephone service to the area served by the EMC municipal system once the purchase transaction is closed. At Page 9 of that

11 The UPSC noted the City's rate increase problem at Page 7 of its Order in Docket No. 04-2419-01, issued August 9, 2004. Mayor Kevin Bailey reiterated the comments to members of the FCC staff on August 25, 2004.

Order, the UPSC stated, "The Commission has no objection to and supports the modification of Qwest's FCC study area that will be needed to consummate the sale and allow transfer of the service area."¹² In accordance with the Stipulation entered into between the parties in the docket before the UPSC, Qwest has filed its conditional petition with the UPSC to amend its certificate and exclude from its Lehi Exchange the area now served by the EMC municipal system. The UPSC certificated that excluded territory to DCCV.¹³ The Petitioners herein will supplement this Joint Petition for Expedited Waiver when the UPSC issues its order approving Qwest's certificate amendment petition.

C. The Change in Study Area Boundaries Will Not Adversely Affect the Universal Service Fund.

To evaluate whether a study area boundary change adversely impacts the USF, the Commission analyzes whether a study area waiver will result in an annual aggregate shift in high-cost support in an amount greater than one percent of the total high-cost support fund for the year.¹⁴ The proposed transaction between EMC and DCCV will produce no such adverse impact, as Section 54.305 of the Commission's Rules provides in pertinent part:

A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same

¹² UPSC Docket No. 04-2419-01, Order, issued August 9, 2004.

¹³ *Id.*

¹⁴ See, e.g. *US WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1774, ¶ 14 (1995) ("*Eagle Order*"); *Norway Order*, ¶ 9.

per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges.¹⁵

As a municipal system serving a high-cost rural area, EMC was eligible to receive federal (but not Utah) USF support; however the City, which has operated its system only since 1997, did not apply for NECA membership or federal USF support. DCCV is, therefore, the successor to EMC's position rather than Qwest's position with respect to federal USF support. It is inconceivable that DCCV's USF support could rise to \$38 million – the figure that now approximates an aggregated one percent increase of annual high cost support.¹⁶ The number of subscriber lines DCCV will serve as a consequence of the purchase transaction with EMC is approximately 2,233. The rates charged by EMC are \$27 per residential line per month, the highest basic local rates in Utah. If federal USF support were substituted for the entire monthly subscriber line revenue for the EMC system, an unthinkable circumstance, the annual total would be \$723,492 per year. Accordingly, this transaction is a non-event for purposes of the USF.

CONCLUSION

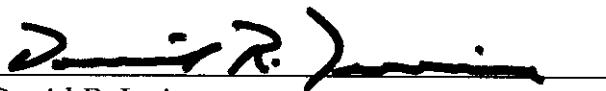
The study area waiver and modification sought herein is a necessary step in order to qualify DCCV, a new company purchasing a municipal system in an

¹⁵ 47 C.F.R. § 54.305(a).

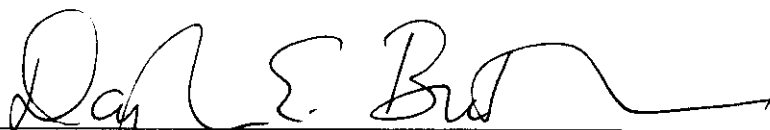
¹⁶ USAC's most recent projections show annual high cost support exceeding \$3.8 billion. See USAC, HC01 - High Cost Support Projected by State by Study Area - 3Q2004.xls, online at <http://www.universalservice.org/> ("USAC HC01").

area no ILEC has previously served, for federal USF support. The immediate request is directly analogous to comparable requests routinely granted by the Commission for similarly situated carriers. Therefore, good cause having been shown, Petitioners respectfully request that this Joint Petition be granted on an expedited basis, thereby affording the affected customers the ability to benefit from the planned acquisition as soon as possible.

DATED this 27th day of October, 2004.



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EXHIBIT 1

Description of Qwest and Direct Communications Cedar Valley Study Area Modifications

Add to QWEST's LEHIUTMA exchange area:

North ½ sec 2, T 5 S, R 1 W

All of sec 3, 7, 8, 9, 10, T 5 S, R 1 W

All of sec 7, 8, 9, 10, 11, 12, T 5 S, R 2 W

Delete from QWEST's LEHIUTMA exchange area (deleted area becomes DIRECT COMMUNICATIONS Eagle Mountain service area):

Sec 17, T 5 S, R 1 W

All except 100' either side of C/L of S.R. 73,

SW ¼ OF SW ¼ ,

South ½ of NW ¼ OF SW ¼ &

50' wide strip along the East and North edges of the NW ¼ of the SW ¼

Sec 18, T 5 S, R 1 W

All North of 100' North of C/L of S.R. 73 except:

NE ¼ of NE ¼ of NE ¼ of SE ¼

Sec 19, T 5 S, R 1 W

Only SE ¼ of SW ¼

Sec 20, T 5 S, R 1 W

All except NW ¼ of NW ¼

Sec 28, 29, 30, 31, 32 & 33, T 5 S, R 1 W

All

Sec 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 & 33, T 6 S, R 1 W

All

Sec 4, 5, 6, 7, 8 & 9, T 7 S, R 1 W

All

Sec 13, T 5 S, R 2 W

All North of 100' North of C/L S.R. 73

Sec 14, 15 & 22, T 5 S, R 2 W

All

Sec 23, T 5 S, R 2 W

All except East 50', South of S.R. 73

Sec 24, T 5 S, R 2 W

All except West 50', South of S.R. 73,
100' either side of C/L of S.R. 73,
and N/E 1/4

Sec 25, T 5 S, R 2 W

All except NW 1/4 of NW 1/4 of NW 1/4

Sec 26, T 5 S, R 2 W

All except 50' along East side of NE 1/4 of NE 1/4 of NE 1/4

Sec 27, 34, 35 & 36, T 5 S, R 2 W

All

Sec 1, 2 & 3, T 6 S, R 2 W

All

Sec 10, T 6 S, R 2 W

All except South 100'

Sec 11, 12, & 13, T 6 S, R 2 W

All

Sec 14, T 6 S, R 2 W

All except West 150'

Sec 15, T 6 S, R 2 W

All except NW 1/4 of NW 1/4 of NW 1/4, 150' along remainder of North side
& East 150'

Sec 22, T 6 S, R 2 W

All except East 150'

Sec 23, T 6 S, R 2 W

All except West 150'

Sec 24 & 25, T 6 S, R 2 W

All

Sec 26, T 6 S, R 2 W

All except West 150' of NW 1/4

Sec 27, T 6 S, R 2 W

All except East 150' of NE 1/4

Sec 34, 35, & 36, T 6 S, R 2 W
All

Sec 1, 2, 3, 10, 11 & 12, T 7 S, R 2 W
All

The base reference point for all of the cited sections is the Salt Lake Base and Meridian.

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

IN THE MATTER OF THE APPLICATION)
OF DIRECT COMMUNICATIONS ROCKLAND,)
INC., and DIRECT COMMUNICATIONS CEDAR)
VALLEY, LLC, FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY)
ALLOWING OPERATION AS AN)
INDEPENDENT LOCAL EXCHANGE)
CARRIER.)

DOCKET NO. 04-2419-01

ORDER

ISSUED: August 9, 2004

SYNOPSIS

The application of Direct Communications Rockland, Inc. and its subsidiary, Direct Communications Cedar Valley, LLC, meet the statutory and other administrative requirements for issuance of a Certificate of Public Convenience and Necessity. Subject to the conditions explained in the Order, the Commission approves the application.

By The Commission:

PROCEDURAL HISTORY

On January 13, 2004, Direct Communications Rockland, Inc. (DCRI) and its subsidiary, Direct Communications Cedar Valley, LLC (DCCV), filed a petition for a Certificate of Public Convenience and Necessity to operate as an independent local exchange carrier providing telecommunications services primarily within the corporate limits of the City of Eagle Mountain, Utah. The companies (jointly referred to as Direct) applied for a Protective Order governing

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the production and use of Confidential Information, and the Public Service Commission (Commission) issued its Protective Order on February 20, 2004. Parties to this case are: Direct, The Division of Public Utilities (Division), the Committee of Consumer Services (Committee), Qwest Corporation (Qwest), the Utah Rural Telecom Association (URTA), and Beehive Telephone Company, Inc. (Beehive).

Direct prefiled testimony and exhibits in support of the petition on March 24, 2004, and filed additional prefiled supplemental testimony and revised exhibits May 26, 2004, all of which have been reviewed by the parties. The parties participated in technical conferences to further review the information presented by Direct. On July 8, 2004, a Stipulation was filed to resolve this case. Parties to the Stipulation are: Direct, the Division, the Committee, Qwest and URTA.

Pursuant to notice, the Commission held a public hearing on Direct's petition at the City Council chambers at the City of Eagle Mountain on July 7, 2004, for the purpose of receiving public testimony. Four public witnesses expressed their support for the sale to Direct, and they encouraged rapid approval by state and federal regulators. An evidentiary hearing on Direct's petition was held on July 8, 2004, at which testimony and evidence was presented by the Division and Direct. The Commission questioned the parties and witnesses regarding various aspects of the Stipulation and the evidence

presented.

HISTORY OF TELECOMMUNICATIONS IN THE EAGLE MOUNTAIN AREA

Eagle Mountain City (the City or Eagle Mountain) was incorporated under Utah law as a fifth class city on December 6, 1996, having been privately developed in an area where no community existed before. Prior to 1996, the only existing economic or human activity in the area was agricultural rangeland and dry farming. Within the area that is now encompassed by Eagle Mountain's boundaries there was literally only a handful of homes all located close to Highway 73 on the edge of the City's boundary.

The City is the only significant residential area in Utah County west of Cedar Mountain. Eagle Mountain has a population of approximately 6,093 and has approximately 2,223 telephone subscribers. Other than municipal utility services, there is very little commercial activity within the city boundaries. Residents depend on other cities in Utah County for nearly all services. The nearest community is Saratoga Springs, which is approximately 8 miles from the center of the City.

By a 1997 municipal ordinance, the City created and operates the only municipal telephone utility in Utah. The City financed its telephone system through the sale of revenue bonds in the amount of approximately \$7 million; currently the bonds have a remaining balance of approximately \$5.1 million. As a municipal system, Eagle Mountain is not subject to the regulatory jurisdiction of

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this Commission.

At the time the City was incorporated (and until the issuance of this Order), Eagle Mountain was located within Qwest's certificated territory. As such, the area is currently within the Qwest Study Area for Utah as that area has been approved by the Federal Communications Commission (FCC). However, due to choices made by the City's original real estate developers, Qwest was never allowed to expand its facilities to serve the area now served by Eagle Mountain. As a result, the area served by the City's telephone system (the area which is the subject of this Order) was never served by Qwest or any other carrier. Therefore the area now served by the City's municipal telephone system was an unserved area since neither Qwest nor any other local exchange company ever served it or had facilities in it.

At the time of the City's initial development, Qwest was willing to extend its service south of Highway 73, in accordance with the terms of its tariff, but the land developers did not choose that option. Subsequent action by the City of Eagle Mountain to organize a municipal utility made it impossible for Qwest to extend service. Currently Qwest serves fewer than 100 subscribers located adjacent to Highway 73, some of whom live within the corporate limits of the City. Qwest will continue to serve these original customers; the geographic area where they live is not included in the request this Order addresses. The population of the City is currently concentrated approximately 5 miles south of

the nearest State road, Highway 73.

As it became obvious that Eagle Mountain could not provide service at a reasonable rate, many parties suggested that one resolution of the problem would be for Qwest to purchase the City's system. While Qwest was willing to place its own facilities to serve Eagle Mountain, utilizing its own existing switches and network, it was not willing to buy what it considered unnecessary equipment to serve the area. Qwest and the City were unsuccessful in negotiating a mutually acceptable agreement for Qwest to provide service in the City. As a result the City has continued to operate the telecommunications system as a municipal utility.

Eagle Mountain and Qwest entered into a formal interconnection agreement in November 2000, which was filed with the Commission. The interconnection arrangement between Qwest and the City is similar to the arrangements between Qwest and other telecommunications companies in Utah.

DISCUSSION

I. The Proposed Purchase and the Necessity of Federal and State Support

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Eagle Mountain's telephone system has been problematic for the City, for its subscribers, and, to some extent, for Utah regulators since its inception. Eagle Mountain has been operating a high cost, rural telephone system, in part, on a learn-as-you-go basis. The original switch offered only limited services and the infrastructure originally installed was of poor quality and faulty design. This resulted in many subscriber complaints. To remedy this situation, Eagle Mountain chose to make significant investments in plant and equipment. In addition to building a proper distribution network, the City also purchased a larger and more technologically sophisticated switch three years ago.

The City's telephone system today is technically capable of providing the same kinds of central office services offered by most local exchange carriers. However, Eagle Mountain has not fully utilized the full range of the new Nortel switch's technical capabilities, nor has it stayed current with evolving technology. As a municipal utility, the City has not participated in the high cost universal service support funding available to telecommunications carriers through the State program administered by this Commission (the State's Universal Public Telecommunications Service Support Fund, hereafter USSF), nor has the City attempted to participate in any of the Federal programs or associations designed to help offset the high cost of providing service in remote areas (although testimony in this Docket suggest it might have qualified for at

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least some of the federal programs). Due to the shortage of revenues, the City has not attempted to do much more than provide basic service. The range of services and options that Direct will provide are greater than the subscribers currently are obtaining through the City's municipal telephone system. In order to make improvements and to keep residential rates affordable, it is advantageous for Direct to participate in the state USSF, and the Federal Universal Service Fund. Obtaining federal and state Universal Service Fund support will support the legislative policy of this State, as set forth in Utah Code Ann. § 54-8b-1.1(2), which favors access to high quality, affordable public telecommunications services by all residents and businesses in the state. The Division witnesses testified that they believe receipt of federal Universal Service Fund support is critical to the economic viability of the system Direct is purchasing.

The operating expenses of the City's system have been borne solely by the subscribers, and they pay the highest local rates of any customers in Utah. The current rate for residential line service is \$27.00 per month, or \$4.05 higher than the State's USSF rate of \$13.50 per residential access line (when the extended area service [EAS] and Carrier Access Line Charge [CALC] or the Subscriber Line Charge [SLC] are added to the "affordable rate" target used in the USSF). The City has indicated that it will soon have to increase telephone rates to meet increasing operational costs. Being part of the National

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Exchange Carriers Association (NECA) and receiving federal and state Universal Service Fund support will allow Direct to maintain the current rates, and perhaps even make adjustment in the future to the statewide USSF-supported average. Direct can obtain capital financing on more reasonable terms than can the City in order to finance growth and improvements.

The vast majority of Eagle Mountain residents today were not residents when the decision to establish a municipal telephone system was made. Nevertheless, these current residents are bound to a telephone system which has been fraught with facility and plant difficulties, has generated many complaints to the City and to state regulators, is chronically underfunded, charges its subscribers the highest local rates in the state, and likely cannot sustain itself over the long term without both federal and state universal service support assistance.

In November 2002, pursuant to its ordinance, the City conducted a referendum in which the City residents were asked to vote on whether the City's telephone utility should be sold to Direct. In that city-wide referendum, 94% of the voters favored the sale in order to receive the additional service features Direct committed to provide. The service Direct proposes to provide is considerably expanded beyond the service now available; Direct has committed to upgrade the existing switch to the latest manufacturer's release, and to assure service that is on par with the service offered to subscribers throughout the rest